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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                   AMAZON.COM, INC., et al.,

CASE NO. C22-1120JLR

11                   Plaintiffs,

ORDER

12                   v.

13                   KEXLEWATERFILTERS, et al.,

14                   Defendants.

15                   I.       INTRODUCTION

16                  Before the court is Plaintiffs Amazon.com, Inc., Amazon.com Services LLC  
17 (together, “Amazon”), General Electric Company, and Haier US Appliance Solutions,  
18 Inc.’s (collectively, “Plaintiffs”) *ex parte* motion for leave to file an amended complaint  
19 and for alternative service of process. (Mot. (Dkt. # 31).) Plaintiffs seek leave to amend  
20 their complaint to add ten new Defendants whom they identified through expedited  
21 discovery conducted in accordance with the court’s October 26, 2022 order. (*Id.* at 1,  
22 2-6; Redlined Prop. Am. Compl. (Dkt. # 32-1); Prop. Am. Compl. (Dkt. # 32-2); *see*

1 10/26/22 Order (Dkt. # 14) (granting expedited discovery).) They also seek leave to  
 2 serve the ten new Defendants by email. (Mot. at 1, 6-7; *see* 5/31/23 Order (Dkt. # 27)  
 3 (authorizing service on the original 16 Defendants by email).) Although the original  
 4 Defendants have been served, none have appeared in this action. (*See* Cert. of Service  
 5 (Dkt. # 28) (stating that Plaintiffs successfully served the original Defendants); *see*  
 6 *generally* Dkt.) Being fully advised, the court GRANTS Plaintiffs' *ex parte* motion for  
 7 leave to amend their complaint and DENIES their motion for alternative service of  
 8 process.

## 9                   **II. BACKGROUND**

10                  The court set forth the relevant background regarding this case and the 16 original  
 11 Defendants in its orders on Plaintiffs' motions for leave to serve the original Defendants  
 12 by email. (*See* 2/15/23 Order (Dkt. # 22) at 2-5; 5/31/23 Order at 3-4.) Therefore, the  
 13 court focuses here on the background relevant to Plaintiffs' current motion.

14                  In their original complaint, Plaintiffs named as Defendants 16 Amazon Selling  
 15 Accounts,<sup>1</sup> in addition to ten unknown Doe Defendants whom they alleged work "in  
 16 active concert with each other and the named Defendants" to advertise, market, and sell  
 17 counterfeit General Electric-branded water filters in the Amazon Store. (*See* Compl.  
 18 (Dkt. # 1) ¶¶ 7, 13-29.) Plaintiffs assert that they have now identified the individuals  
 19 associated with ten of these Amazon Selling Accounts by matching information and

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 21                  <sup>1</sup> These Amazon Selling Accounts are KexleWaterFilters, HOM-POWER Store,  
 22 NO-MIIMS, CLANORY, Tomorrow-Citystor, HOMASZ, Romarotic, Dropsales, Tamei-US,  
 DanielJames, icepy, WanHaoFilter, HNAMZ-US, DOOBOO-US, Purtech, and Barcelona-US.  
 (Compl. (Dkt. # 1) ¶¶ 13-29.)

1 documents received in response to a third-party subpoena issued to Defendants' payment  
 2 service provider with information in Amazon's internal records. (Buckley Decl. (Dkt.  
 3 # 32) ¶ 2; *see* Prop. Am. Compl. ¶¶ 14-39.<sup>2</sup>) These records indicate that the individuals  
 4 are located "primarily in China." (*Id.*)

### 5 III. ANALYSIS

6 The court first considers Plaintiffs' motion to amend, then turns to Plaintiffs'  
 7 motion for leave to serve the new Defendants by email.

#### 8 A. Motion to Amend

9 Plaintiffs seek leave to amend their complaint to add the ten newly-identified  
 10 individuals as Defendants. (Mot. at 2-7.) Federal Rule of Civil Procedure 15(a)(2) states  
 11 that "[t]he court should freely give leave [to amend the complaint] when justice so  
 12 requires." Fed. R. Civ. P. 15(a)(2). Courts consider five factors when assessing a motion  
 13 for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party,  
 14 (4) futility of amendment, and (5) whether the party has previously amended its pleading.  
 15 *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990) (citing *Ascon Props., Inc.*  
 16 v. *Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989)). The court finds no evidence in  
 17 the record to indicate bad faith, undue delay, prejudice, or futility of amendment; and  
 18 Plaintiffs have not previously amended their complaint. Accordingly, the court

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 20 <sup>2</sup> These individuals are Yue Xuan, doing business as HOM-POWER Store; Wang  
 21 NianQi, doing business as NO-MIIMS; Deng Yi, doing business as Romarotic; Tan Mei, doing  
 22 business as Tamei-US; Dao Ping Yang, doing business as icepy; Zheng Li, doing business as  
 WanHaoFilter; Fang Jie Li, doing business as HNAMZ-US; Wang Chun Xia, doing business as  
 DOOBOO-US; Liping Yang, doing business as Purtech; and Liu Ying Lian, doing business as  
 Barcelona-US. (*Id.*)

1 GRANTS Plaintiffs leave to amend their complaint to add the ten individuals whom they  
2 allege are associated with the Defendant Amazon Selling Accounts as new Defendants.

3 **B. Motion to Serve by Email**

4 Plaintiffs ask the court for leave to serve the new individual Defendants by email  
5 using the email addresses for the Amazon Selling Accounts with which those individuals  
6 are associated. (Mot. at 6.) Federal Rule of Civil Procedure 4(h) governs service of  
7 process on foreign businesses. Fed. R. Civ. P. 4(h). Rule 4(h)(2) authorizes service of  
8 process on a foreign corporation “at a place not within any judicial district of the United  
9 States, in any manner prescribed by Rule 4(f) for serving an individual, except personal  
10 delivery under (f)(2)(C)(i).” Fed. R. Civ. P. 4(h)(2). Rules 4(f)(1) and 4(f)(2) provide  
11 specific methods of serving process on individuals in foreign countries. *See* Fed. R. Civ.  
12 P. 4(f)(1)-(2). Rule 4(f)(3) allows international service by a method not listed in Rule  
13 4(f)(1) or (2) if the method is “not prohibited by international agreement, as the court  
14 orders.” Fed. R. Civ. P. 4(f)(3). As long as the method of service is “court-directed and  
15 not prohibited by an international agreement, service of process ordered under Rule  
16 4(f)(3) may be accomplished in contravention of the laws of the foreign country.” *Rio*  
17 *Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). The court has  
18 previously concluded that Rule 4(f)(3) permits service by email to defendants in China.  
19 (*See* 2/15/23 Order at 6-8.)

20 “Even if facially permitted by Rule 4(f)(3),” however, “a method of service of  
21 process must also comport with constitutional notions of due process.” *Rio Props.*, 284  
22 F.3d at 1016. The “method of service crafted by the district court must be ‘reasonably

1 calculated, under all the circumstances, to apprise interested parties of the pendency of  
2 the action and afford them an opportunity to present their objections.”” *Id.* at 1016-17  
3 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). The  
4 court has previously concluded that the due process requirement for alternative service by  
5 email is satisfied when the plaintiff demonstrates that the email addresses at issue are  
6 valid and are successfully receiving messages. (2/15/23 Order at 8-9 (discussing multiple  
7 cases).) Thus, Plaintiffs must provide evidence that email messages sent to the email  
8 addresses associated with the original Defendants’ Amazon Selling Accounts provide a  
9 reliable means of communicating with the new Defendants and are likely to provide the  
10 new Defendants with notice of this lawsuit. (*See id.* at 9-10 (denying Plaintiffs’ first  
11 motion for leave to serve the original Defendants by email because they had not made  
12 this required showing); 5/31/23 Order at 4-5 (granting Plaintiffs’ second motion for leave  
13 to serve the original Defendants by email after they provided evidence that the email  
14 addresses associated with the Amazon Selling Accounts were still valid and receiving  
15 messages).)

16 Plaintiffs assert that service by email to the new individual Defendants comports  
17 with due process because they have already (1) demonstrated that the email addresses  
18 associated with the relevant Amazon Selling Accounts are valid and receiving messages  
19 and (2) successfully served the original Defendants by email. (Mot. at 6.) Plaintiffs,  
20 however, do not appear to have sent email messages to those email addresses since they  
21 effected service by email on June 6, 2023. (*See* Cert. of Service at 1.) Because it has  
22 been nearly four months since Plaintiffs tested the validity of those email addresses, the

1 court is not satisfied that email to those addresses remains a reliable means of contacting  
2 the individuals associated with the Amazon Selling Accounts. As a result, the court  
3 DENIES Plaintiffs' motion for leave to serve the ten new Defendants without prejudice  
4 to renewing their motion with evidence that the email addresses associated with the  
5 relevant Amazon Selling Accounts remain valid.

6 **IV. CONCLUSION**

7 For the foregoing reasons, the court GRANTS in part and DENIES in part  
8 Plaintiffs' *ex parte* motion for leave to file an amended complaint and for alternative  
9 service (Dkt. # 31). The court ORDERS as follows:

10 (1) Plaintiffs' motion to amend their complaint is GRANTED. Plaintiffs shall  
11 file their first amended complaint by no later than **October 6, 2023**; and

12 (2) Plaintiffs' motion for leave to serve the ten new Defendants by email is  
13 DENIED without prejudice. Plaintiffs may renew their motion with evidence that the  
14 email addresses associated with the relevant Amazon Selling Accounts remain valid.

15 Dated this 29th day of September, 2023.

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18 JAMES L. ROBART  
United States District Judge  
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